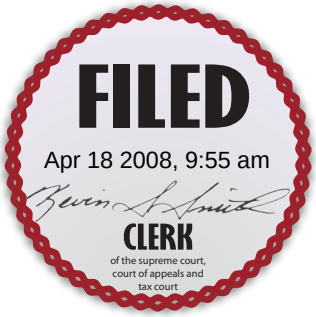

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IN THE
COURT OF APPEALS OF INDIANA

CERO W. RUSSELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0801-CR-54
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0603-FA-5

April 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Cero Russell appeals his eighteen-year sentence for Class B felony possession of cocaine. We affirm.

Issue

Russell raises one issue on appeal, which we restate as whether an eighteen-year sentence is appropriate in light of the nature of the offense and his character.

Facts

Russell sold cocaine from his home to a confidential informant ("CI") for the Tippecanoe County Drug Task Force on August 22, 2005. Russell's home is within 1,000 feet of a public park. When the CI arrived at Russell's home for a second buy that day, Russell requested a ride to another location and provided the cocaine there.

On March 27, 2006, the State charged Russell with Class A felony dealing in cocaine, Class B felony possession of cocaine, Class B felony dealing in cocaine, Class D felony possession of cocaine, Class D felony maintaining a common nuisance, and Class A felony conspiracy to commit dealing in cocaine. Russell pled guilty to only Class B felony possession of cocaine and the remaining charges were dismissed. On September 7, 2007, the trial court sentenced Russell to eighteen years, with three suspended on probation. This appeal followed.

Analysis

We assess whether Russell's sentence for Class B felony possession of cocaine is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). Although Rule

7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

Russell contends that because of the non-violent nature of his offense and his history of steady employment, an eighteen-year sentence is inappropriate. The advisory sentence for a Class B felony is ten years, with a twenty-year maximum. See Ind. Code § 35-50-2-5. In ordering an eighteen-year sentence, the trial court found that Russell's criminal history was an aggravator that outweighed the mitigating factor of Russell's job training while incarcerated.

Russell's criminal history is lengthy, extending from 1981 to the instant offense and including nine misdemeanor convictions and four felony convictions. Previous felony convictions include dealing in cocaine, forgery, battery, and escape. The misdemeanor convictions include forgery, driving while suspended, disorderly conduct, battery, and invasion of privacy. Such a criminal history indicates that Russell has not led a law-abiding life and does not reflect positively on his character.

Russell also acknowledges nearly a lifetime of substance abuse problems, but such addictions do not excuse his criminal behaviors. Russell received a relatively lenient sentence for a 1988 conviction for Class A felony possession of cocaine, but the experience did not reform his behavior. It is commendable that Russell seems to be

taking full advantage of vocational and educational opportunities while incarcerated, but such efforts do not warrant a reduction to his sentence.

Although the fact that Russell pled guilty is positive in our assessment of his character, in considering the benefits he received for the guilty plea, it is not afforded a great deal of mitigating weight. See McElroy v. State, 865 N.E.2d 584, 591-92 (Ind. 2007). By pleading guilty to one Class B felony charge the State dismissed five other pending charges, including two Class A felonies, and an unrelated battery charge. Considering these circumstances, we cannot conclude that Russell's character warrants a reduction to the sentence.

Regarding the nature of the offense, Russell contends it was non-violent and "engineered by the police" and therefore did not justify an eighteen-year sentence. Appellant's Br. p. 16. An offense of a relatively unremarkable nature, however, does not automatically result in a sentence below the advisory. Russell still possessed cocaine within 1,000 feet of a public park. His eighteen-year sentence is still two years less than the maximum sentence available. Russell has not persuaded us that his sentence is inappropriate.

Conclusion

The eighteen-year sentence is appropriate in light of the nature of the offense and Russell's character. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.